

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11971-GAO

JANET M. BUTLER,
Plaintiff

v.

MARK S. BEATON, et al.,
Defendants

ORDER
January 3, 2005

O'TOOLE, D.J.

1. After review of the Report and Recommendation filed by Magistrate Judge Dein (No. 20), to which the parties have submitted no objections, I am satisfied that the Magistrate Judge appropriately resolved the issues presented, and I approve the report and adopt the recommendation made with regard to the plaintiff's motion for partial judgment on the pleadings (No. 16), which has been treated as a motion for summary judgment. Accordingly, summary judgment is granted in the plaintiff's favor as to count 1 of the complaint.

Judgment shall enter under Count 1 as follows:


"Pursuant to Massachusetts General Laws Chapter 249, Section 4, it is ORDERED and ADJUDGED that the decision of the Kingston Board of Selectmen removing plaintiff Janet Butler be quashed as arbitrary and capricious, and that Butler shall accordingly resume her position as an alternate member of the Kingston Zoning Board of Appeals."

2. The report and recommendation, at note 2, indicates that the plaintiff had moved for partial judgment on the pleadings as to count 1 only and, consequently, that the Magistrate Judge expressed no opinion as to the merits of counts two, three, and four of the complaint. Nevertheless, the report and recommendation, at pages 18-24, addresses the substance of count 3 of the complaint, and the Magistrate Judge, at page 24, concluded that "the defendants did not violate the plaintiff's constitutional right to procedural due process." In light of that conclusion, the parties have jointly moved for the entry of a final judgment as to count 3. Again, I agree with the report and adopt the recommendation with regard to the plaintiff's due process claim. Accordingly, judgment is granted in the defendants' favor as to count 3 of the complaint.

The parties shall bear their own costs and fees.

It is SO ORDERED.

January 3, 2005
DATE


DISTRICT JUDGE